

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation Into the Actions of
Southern California Edison Company (U 338 E),
and Its Officers and Employees for
Non-Compliance with a Commission Decision.

Investigation _____

**ORDER INSTITUTING INVESTIGATION AND ORDER TO SHOW
CAUSE DIRECTED TO SOUTHERN CALIFORNIA EDISON,
ITS OFFICERS AND EMPLOYEES FOR THEIR FAILURE
TO COMPLY WITH DECISION 01-06-039**

Summary

The Commission opens this investigation and orders Southern California Edison Company (Edison), its officers and employees to show cause whether or not they should be held in contempt, subject to penalties, and referred to the appropriate authorities to file criminal proceedings for their failure to comply with Decision (D.) 01-06-039. D.01-06-039 directed Edison to tender its test year (TY) 2003 General Rate Case Notice of Intent (NOI) to the Commission no later than August 15, 2001. The Commission's Executive Director granted Edison extensions until September 13, 2001, to tender the NOI. As of the date of this Order Instituting Investigation (OII) and Order to Show Cause (OSC), Edison has failed to tender that NOI.

The Commission shall hold hearings on this OSC beginning on December 19, 2001 at 10:00 a.m., and continuing each day thereafter until concluded.

Background

In D.01-06-039, the Commission granted Edison's motion to defer its next general rate case (GRC) to a 2003 TY and ordered Edison to tender its NOI to the Commission no later than August 15, 2001. Edison had tendered a limited NOI for its TY 2002 GRC that the Commission concluded was outdated.

Edison requested two extensions of time to submit its NOI. The first request, submitted to the Executive Director on August 1, 2001, requested an extension until October 16, 2001, to tender the NOI due to uncertainty concerning legislation related to Edison's Memorandum of Understanding with the California Department of Water Resources. The Executive Director granted Edison a limited extension until September 4, 2001, to tender its NOI because the Commission staggers major proceedings to facilitate efficient use of Commission resources. On August 23, 2001, Edison submitted the second extension request in conjunction with a petition to modify D.01-06-039 and requested the extension to permit parties the opportunity to comment on and the Commission to act on Edison's petition. On September 4, 2001, the Executive Director granted Edison a second extension, until September 13, 2001, to tender its NOI.

Edison's Petition to Modify D.01-06-039, filed on August 23, 2001, requested that the Commission change the timing for its next GRC and permit Edison to tender its NOI within 75 days after resolution of uncertainties surrounding legislative alternatives to address California's energy crisis and its effect on Edison's financial condition. Edison also proposed that the Commission staff audit's findings be reported in the existing docket for Edison's 1995 GRC.

On September 13, 2001, Edison sent a letter to the Executive Director to inform him that for the reasons stated in Edison's Petition to Modify, Edison was

unable to tender its NOI on September 13, 2001. On September 13, 2001, the Executive Director responded to Edison's letter and informed Edison that if it did not submit its NOI at the close of business that day Edison would be out of compliance with D.01-06-039.

Although Edison submitted a letter to the Commission's President on October 26, 2001, stating that Edison intends to submit its NOI to the Office of Ratepayer Advocates no later than December 17, 2001, this does not vitiate Edison's duty to fully comply with Commission orders.

OII and Scope of Proceeding

Based on good cause as shown in the background section above, and as described below, this OII shall be opened to investigate the actions of Edison and its officers and employees for non-compliance with D.01-06-039. This OSC shall issue to permit Edison, its officers and employees to show cause whether or not they should be held in contempt and referred to the appropriate authorities to file criminal proceedings for their failure to comply with D.01-06-039. This OII and related OSC are issued subject to the authority granted to the Commission under Public Utilities Code §§ 702, 2101, 2109, 2110, and 2113. Edison and its officers and employees responsible for failing to comply with D.01-06-039 shall be made respondents to this OII and the related OSC.

The above-referenced code provisions require compliance with Commission orders, decisions, directions or rules and permit the Commission to punish by contempt for failure to comply with any part of a Commission order, decision, rule, regulation, direction, demand, or requirement. Further, the Commission may request the appropriate authorities to file criminal charges for such failure to comply.

This OII and related OSC shall also determine whether Edison and its officers and employees should be subject to the penalties provided for in Public Utilities Code §§ 2107, 2108, and 2113. Public Utilities Code § 2107 provides for a penalty of not less than \$500, nor more than \$20,000 for each offense. Public Utilities Code § 2108 provides that:

“Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day’s continuance thereof shall be a separate and distinct offense.”

Public Utilities Code § 2113 provides that the Commission may punish for contempt “in the same manner and to the same extent as contempt is punished by courts of record.”

In assessing any appropriate penalties, the Commission will also consider whether Edison should be directed to notify its shareholders of any violation of the Public Utilities Code and of the non-tax deductibility of any penalties that may be imposed.

Edison is directed to file with the Commission on or before December 14, 2001 a list of all Edison officers and employees who decided that Edison would not tender its TY 2003 NOI on September 13, 2001.

The hearing on the OSC will be held starting on December 19, 2001, at 10:00 a.m. at the State Office Building, 505 Van Ness Avenue, San Francisco. The hearing shall continue on a day-to-basis until concluded. Edison and its responsible officers and employees shall be prepared on those dates and time to show cause whether or not Edison and its officers and employees failed to comply with D.01-06-039, whether or not they should be held in contempt, whether or not the Commission should request that criminal proceedings be

initiated, and whether or not they should be subject to the penalties available to the Commission. The Commission staff is directed to appear at the hearing on the OSC to cross-examine Edison's witnesses, as necessary. Other interested persons may participate in this OII as provided for in Rule 54 of the Commission's Rules of Practice and Procedure.

Preliminary Scoping Memo

Rule 6(c)(1) of the Commission's Rules of Practice and Procedure provides that an OII and OSC shall determine the category and need for hearing, and shall attach a preliminary scoping memo. This OII and the related OSC are determined to be adjudicatory, as that term is defined in Rule 5(b). Any person who objects to the categorization of this proceeding may appeal the categorization pursuant to Rule 6.4.

Consistent with the adjudicatory categorization of this proceeding, there will be a formal hearing on the OII and related OSC involving adjudicative facts.¹ That hearing will take place starting on December 19, 2001, as described above. Consistent with Rule 6.2, the assigned Commissioner may set a prehearing conference in advance of the formal hearing through the issuance of an assigned Commissioner's ruling.

A copy of this OII and OSC shall be served on Edison, and its attorney.

Consistent with Rule 6(e), we expect that this proceeding will be concluded within 12 months.

¹ Adjudicative facts are defined in Rule 8(f)(3) as facts which "answer questions such as who did what, where, when, how, why, with what motive or intent."

Ex Parte Communications

This proceeding is subject to Rule 7, which specifies standards for engaging in ex parte communications and the reporting of such communications. Pursuant to Rule 7(a)(3) and 7(b), ex parte communications are prohibited.

Therefore, **IT IS ORDERED** that:

1. For good cause shown, an Order Instituting Investigation (OII) and a related Order to Show Cause (OSC) are instituted on the Commission's own motion to investigate non-compliance with a Commission decision and to permit Southern California Edison Company (Edison) and the responsible officers and employees to show cause whether or not they should be held in contempt and should be subject to the penalties provided for in the Public Utilities Code for their failure to comply with Decision 01-06-039. Furthermore, the Commission shall determine whether a request should be made of the responsible authorities to initiate criminal proceedings for a violation of Public Utilities Code § 2110.
2. Edison and its officers and employees responsible for deciding that Edison would not tender its Notice of Intent (NOI) for Test Year 2003 on September 13, 2001, shall be made respondents to this OII and related OSC and shall appear on December 19, 2001 at 10:00 a.m., and every day thereafter until the hearing is concluded, at the State Office Building, 505 Van Ness Avenue, San Francisco.
3. The Executive Director shall cause this OII and related OSC to be served on Edison and its attorney, and on the service list in Application 93-12-025 and Investigation 94-02-002.
4. Edison is directed to file and serve with the Commission on or before December 14, 2001, a list of all its officers and employees who decided that Edison

would not tender its NOI for Test Year 2003 with the Commission on September 13, 2001.

5. The Commission staff shall appear at the hearing on the OSC to cross-examine Edison's witnesses, as necessary.
6. The category of this OII and related OSC is determined to be adjudicatory.

7. Any person who objects to the categorization of this OII and related OSC shall file an appeal pursuant to Rule 6.4 of the Commission's Rules of Practice and Procedure.

This order is effective today.

Dated _____, at San Francisco, California.